

Introduced by Senator Machado

January 28, 2004

An act to add Section 79442 to the Water Code, relating to water.

LEGISLATIVE COUNSEL'S DIGEST

SB 1155, as introduced, Machado. Sacramento-San Joaquin Delta.

Existing law, the California Bay-Delta Authority Act, establishes in the Resources Agency the California Bay-Delta Authority until January 1, 2006, unless a certain determination is made. The act requires the authority and the implementing agencies, as defined, to carry out the programs, projects, and activities necessary to implement the Bay-Delta Program, defined to mean those projects, programs, commitments, and other actions that address the goals and objectives of the CALFED Bay-Delta Programmatic Record of Decision, dated August 28, 2000, or as it may be amended. The act requires the authority to review, approve, and make recommendations regarding certain program plans and expenditure plans submitted by the implementing agencies and to undertake related actions.

This bill, with a certain exception, would prohibit a public agency, including the authority, from assisting or cooperating with any other public agency for the purposes of increasing pumping from the Sacramento-San Joaquin Delta beyond levels authorized under applicable operating criteria in effect on July 1, 2003, until the authority, the State Water Resources Control Board or the appropriate California regional water quality control board, and the Department of Water Resources, in collaboration with the implementing agencies, undertake certain actions in accordance with a process that encourages public participation and in furtherance of certain described solution principles.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares all of the
2 following:

3 (a) The CALFED Programmatic Record of Decision (ROD)
4 and its associated documents described actions that were intended
5 to take place in an integrated framework and not independently of
6 one another. While each program element was described
7 individually, it was understood that only through coordinated,
8 linked, incremental investigation, analysis, and implementation
9 could the problems in the Sacramento-San Joaquin Delta (delta)
10 be effectively resolved.

11 (b) (1) The implementation of the Bay-Delta Program, as
12 defined by subdivision (e) of Section 79402 of the Water Code, has
13 not been balanced across all programs, as described in subdivision
14 (b) of Section 79402 of the Water Code.

15 (2) The implementation has not been consistent with the
16 implementation schedule and milestones described in the
17 CALFED ROD.

18 (3) The implementation has not resulted in concurrent
19 improvement in all program elements in a manner that ensures that
20 improvements in some program elements are not made without
21 corresponding improvements in other program elements.

22 (c) Each of the following CALFED documents stated that prior
23 to increasing pumping from the delta to up 8,500 cubic feet per
24 second during periods that are restricted under applicable
25 operating criteria, new operational rules for use of additional
26 export capability will be determined through an “open CALFED
27 process”:

28 (1) The CALFED ROD prepared by the CALFED Bay-Delta
29 Program, dated August 28, 2000.

30 (2) “Section 7” biological opinions prepared by the United
31 States Fish and Wildlife Service, dated August 28, 2000.

32 (3) “Section 7” biological opinions prepared by the National
33 Marine Fisheries Service, dated August 28, 2000.



1 (4) The natural community conservation plan determination
2 made by the Department of Fish and Game, dated August 28,
3 2000.

4 (5) The publication entitled “California’s Water Future, a
5 Framework for Action,” prepared by the CALFED Bay-Delta
6 Program, dated June 9, 2000.

7 (d) The Department of Water Resources convened an open
8 CALFED process in 2002 to try to develop an operational rules
9 plan that would increase delta pumping to up to 8,500 cubic feet
10 per second during periods that are currently restricted. In the
11 progress report entitled “Report on 8500 Stakeholder Process to
12 California Department of Water Resources,” dated October 31,
13 2002, the facilitator found that the stakeholder groups had not
14 reached consensus on an operations plan.

15 (e) Recent private negotiations between the Department of
16 Water Resources and the United States Bureau of Reclamation
17 have resulted in a plan to increase delta pumping to up to 8,500
18 cubic feet per second during periods that are currently restricted.
19 This “Draft Proposition Concerning CVP/SWP Integrated
20 Operations,” also known as the “Napa Agreement,” was
21 developed behind closed doors, without direct input from many
22 stakeholder groups or from state or federal wildlife agencies. The
23 Napa Agreement does not conform to the CALFED solution
24 principles. Moreover, “after the fact” negotiations between a few
25 delta export interests and a select group of delta water agencies in
26 no way substitutes for consultations undertaken in accordance
27 with an open CALFED process.

28 (f) In order to restore balance in the implementation of the
29 ROD, to ensure that the Bay-Delta Program fulfills its
30 commitment to achieving continuous improvement in the quality
31 of the waters of the delta system, and to preserve the integrity of
32 the CALFED process, it is necessary for the Legislature to enact
33 this act.

34 SEC. 2. Section 79442 is added to the Water Code, to read:
35 79442. (a) Notwithstanding subdivision (c) of Section
36 79403.5, no public agency, including the authority, may assist by
37 loan, grant, contract, license, permit, resolution, staffing, use of
38 facilities, or otherwise cooperate with, any other public agency for
39 the purposes of increasing pumping from the delta beyond levels

1 authorized under applicable operating criteria in effect on July 1,
2 2003, until all of the following requirements have been met:

3 (1) The authority, in collaboration with the implementing
4 agencies, prepares and implements a plan to meet all water quality
5 standards and objectives in effect on July 1, 2003, for which the
6 State Water Project or the federal Central Valley Project, or both,
7 have responsibility. This plan shall include all of the following
8 components:

9 (A) An enumeration of all existing water quality standards and
10 objectives for which the State Water Project, the federal Central
11 Valley Project, or both water projects, have responsibility. This
12 includes all flow based standards.

13 (B) A description of each action to be undertaken to meet the
14 standards and objectives described in subparagraph (A). The
15 description shall include an identification of all of the following:

16 (i) The agency responsible for implementing the action.
17 (ii) The schedule for implementing the action.
18 (iii) To the maximum extent practicable, quantitative estimates
19 of the specific improvements to be realized by the implementation
20 of the action toward meeting the standards and objectives
21 described in subparagraph (A).

22 (C) The water quality consequences of not meeting the
23 implementation schedule described in clause (ii) of subparagraph
24 (B).

25 (D) A financing plan for implementing the plan.

26 (E) A contingency plan to be undertaken if one or more of the
27 plan's components is not implemented in accordance with this
28 section.

29 (2) The state board or the appropriate regional board, in
30 collaboration with the implementing agencies, adopts a water
31 quality control plan to address low dissolved oxygen in the San
32 Joaquin River and adopts total maximum daily levels for
33 pollutants that cause that low dissolved oxygen in accordance with
34 Section 1313(d) of Title 33 of the United States Code.

35 (3) The state board or the appropriate regional board, in
36 collaboration with the implementing agencies, adopts a water
37 quality control plan, and total maximum daily loads in accordance
38 with Section 1313(d) of Title 33 of the United States Code, for
39 salinity in the lower San Joaquin River and commences
40 implementation of appropriate source control measures.

(4) The department, in collaboration with the implementing agencies, completes a study and provides recommendations to the authority on the use of recirculation to meet the objectives of the Bay-Delta Program. The study shall include an analysis of impacts and benefits, and recommendations on infrastructure improvements necessary to implement recirculation, as appropriate. The recommendations shall specifically address the role that recirculation will provide in improving dissolved oxygen levels in the San Joaquin River.

(5) The authority, in collaboration with the implementing agencies, determines the feasibility of restoring habitat and improving hydraulic conditions on Frank's Tract in the delta to optimize improvements in ecosystem restoration, levee stability, and delta water quality.

(6) The authority, in collaboration with implementing agencies, develops and adopts a process to certify urban water plan management prepared pursuant to Part 2.6 (commencing with Section 10610) of Division 6.

(7) The authority, in collaboration with the implementing agencies, convenes an independent review panel on appropriate measurement of surface water and groundwater deliveries and prepares and submits to the Legislature a report regarding suggested legislation relating thereto.

(8) The department, in collaboration with the implementing agencies, completes a funding plan to dredge and install operable barriers to ensure that water is of adequate quantity and quality for agricultural users within the south delta.

(9) The department, in collaboration with the implementing agencies, completes environmental studies for floodway improvements on the lower San Joaquin River to provide conveyance, flood control, and ecosystem benefits.

(10) The department, in collaboration with the implementing agencies, reconvenes and completes its process to develop a project specific operation plan that addresses the potential impacts of increased pumping.

(b) (1) Each state agency that undertakes any activity described in paragraphs (1) to (10), inclusive, of subdivision (a) shall carry out that activity in accordance with an open bay-delta process that encourages public participation.

1 (2) For the purposes of carrying out activities described in
2 paragraph (1), each state agency shall conduct periodic meetings
3 that are publicly noticed and facilitated using consensus seeking
4 techniques.

5 (3) All actions undertaken or proposed by an agency pursuant
6 to subdivision (a) shall conform to all of the following solution
7 principles:

8 (A) “Reduce conflicts in the system,” which means the action,
9 in the judgment of the agency, will reduce major conflicts among
10 beneficial uses of water.

11 (B) “Be equitable,” which means the action, in the judgment
12 of the agency, will focus on solving problems in all problem areas.

13 (C) “Be affordable,” which means the action, in the judgment
14 of the agency, will be implemented using the resources of the
15 Bay-Delta Program and affected parties.

16 (D) “Be durable,” which means the action, in the judgment of
17 the agency, will have political and economic staying power and
18 will sustain the resources they were designed to protect and
19 enhance.

20 (E) “Be implementable,” which means the action, in the
21 judgment of the agency, will have broad public acceptance and
22 legal feasibility, and will be timely and relatively simple to
23 implement when compared to other possible actions.

24 (F) “Have no significant redirected impacts,” which means the
25 action, in the judgment of the agency, will not solve problems in
26 the delta system by redirecting significant negative impacts, when
27 viewed in their entirety, to other areas of the delta or to areas
28 outside the delta.

29 (c) Notwithstanding subdivision (a), the department may
30 conduct studies on the impacts of operating State Water Project
31 pumps at up to 8,500 cubic feet per second, but only for the
32 purposes of paragraph (10) of subdivision (a) and in accordance
33 with subdivision (b).